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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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Attorney for Plaintiff Pacific Maritime Freight, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PACIFIC MARITIME FREIGHT, INC.,

Plaintiff,

v.

SONIA L. FOSTER; THE FOSTER
GROUP, INC.; and DOES 1 through 10,
inclusive,

Defendants.

Civil Case No.

10 CV 0578

BTM BLM

COMPLAINT FOR:

1. BREACH OF FIDUCIARY DUTY (GENERALLY)
2. BREACH OF FIDUCIARY DUTY (PHANTOM GSA LISTINGS)
3. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
4. BREACH OF CONTRACT
5. FRAUD
6. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
7. TRADE SECRET MISAPPROPRIATION & UNFAIR COMPETITION
8. RESCISSION
9. DECLARATION THAT NO FUTURE COMPENSATION DUE TO DEFENDANTS

Plaintiff Pacific Maritime Freight, Inc., doing business as "Pacific Tugboat Service," (hereinafter **"PTS"**), by and through its undersigned attorneys, brings this complaint against Sonia L. Foster and The Foster Group, Inc. (hereinafter often referred to collectively as **"Foster"**).

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INTRODUCTION

1
2 1. Plaintiff PTS seeks in this action, *inter alia*, relief for harm caused by
3 Foster's breach of fiduciary duties that occurred in its capacity as PTS's government
4 contracts marketing agent for boat sales, and for misuse of trade secrets and unfair
5 competition that occurred while Foster was still representing and being paid by PTS
6 under contract. Under Foster's 5-year marketing program PTS has paid to Foster and
7 its designated lobbyists over \$1.5 million yet Foster has and is still attempting to destroy
8 PTS's market position and good will and to cause PTS to lose potential contract
9 opportunities. Foster is contacting PTS's federal government customer and seeking to
10 undermine PTS's relationship and convert those contracting opportunities to itself and
11 its other clients. Foster abused the trust reposed in it by corruptly scheming against
12 PTS while still under contract to PTS and while still embodying PTS's primary "face" to
13 the relevant Navy and General Services Administration personnel, and causing PTS to be
14 almost evicted from the government commercial sales program. Foster has destroyed
15 nearly all value from PTS's \$1.5 million investment in their 5-year marketing program.
16 PTS seeks a return of its investment, as well as the other relief sought hereinbelow.

17 2. Foster's other unethical practices detrimental to PTS include its attempt,
18 while still PTS's trusted agent, to rig the bids on the tug boat sales program so that the
19 Navy would receive an artificially high price from PTS and award at a different price to a
20 contractor controlled by Foster. Foster also secretly used PTS's GSA sales list to include
21 goods that PTS was not actually selling but doing so for the purpose of circumventing
22 federal competition regulations for the benefit of Foster's other clients. In light of
23 Foster's pervasive pattern of corruption and abuse, PTS seeks to rescind their entire
24 contract relationship and put the parties back in their original position with ancillary
25 damages and appropriate equitable relief.

PARTIES

26
27 3. Plaintiff PTS is a duly organized California corporation (Pacific Maritime
28 Freight, Inc.) with its principal place of business and home office in San Diego,

1 California. It provides a variety of marine services including towing, freight hauling,
2 barge and tug services, marine construction, and related products. It also provides
3 substantial services under contracts with the federal government.

4 4. Defendant Sonia L. Foster is an individual and resident of the State of
5 Maryland. (Sonia L. Foster will be referred to by her full name or "**Ms. Foster**".) PTS is
6 informed and believes, and thereon alleges, that she wholly owns and controls defendant
7 The Foster Group, Inc., a Maryland domestic corporation with its principal place of
8 business in Stevensville, Maryland. Ms. Foster is a highly sophisticated Washington
9 D.C. "Beltway" consultant specializing in initiating funding and awards to her contractor
10 clients seeking federal government contracts. Her undertaking to provide these services
11 to PTS is the relationship giving rise to this action.

12 5. The true names and capacities of defendants sued as DOES 1-10 are
13 unknown to Plaintiff. Plaintiff will move to amend the complaint to allege their true
14 names or capacities when they have been ascertained. Plaintiff is informed and believes
15 and on that basis alleges that each fictitious DOE Defendant is in some manner
16 responsible for the acts or omissions alleged, and for the damages claimed, in this
17 complaint.

18 6. Plaintiff is informed and believes and on that basis alleges that each named
19 Defendant was the agent, servant, employee, partner, or joint venturer of each other
20 Defendant, and that each Defendant was acting within the course and scope of such
21 agency, employment, partnership, or joint venture, and with the consent or the
22 ratification of each other in doing the things alleged here.

23 7. PTS is informed and believes, and thereon alleges, that there exists such a
24 unity of interest and ownership between defendants Sonia Foster and her solely-owned
25 company The Foster Group, Inc. that there is no practical separation between them, and
26 if the actions set forth herein are treated as those of the Foster Group alone and not the
27 acts of Sonia Foster as well, an inequitable result will follow. Piercing the "corporate
28 veil" is warranted under the unique circumstances of this case as the defendants have

1 behaved corruptly and engaged in egregiously bad faith acts and omissions which have
 2 resulted in damages to PTS. With respect to each of the causes of action alleged herein
 3 against either defendant the Court is requested to pierce the corporate veil and find
 4 defendant Sonia Foster the alter ego of the Foster Group and individually liable for the
 5 obligations of the Foster Group.

6 **JURISDICTION AND VENUE**

7 8. This Court has subject matter jurisdiction over this action because the
 8 action is between citizens of different states and the amount in controversy exceeds the
 9 federal minimum threshold of \$75,000 exclusive of interest and costs pursuant to 28
 10 U.S.C. Section 1332.

11 9. A substantial portion of the occurrences, transactions, acts, and omissions
 12 giving rise to Plaintiffs' claims have occurred, and continue to occur, in San Diego
 13 County, California, including but not limited to: the harm and breach of fiduciary duty
 14 to PTS whose main offices are in this County; the written contracts at issue were
 15 executed in this County; and performance thereunder was intended to and did occur in
 16 San Diego County, California. Venue in this Court is therefore proper pursuant to 28
 17 U.S.C. § 1391(a).

18 **FACTUAL BACKGROUND**

19 Subsection hearings:

20 The PTS-Foster Relationship

21 The PEO Ships Program

22 Foster-PTS Program Development

23 Foster Attempts to Sabotage PTS' GSA List Contract

24 Foster's GSA List Fabrication - Phantom Competition

25 Foster Intentionally Damages or Destroys the Tug Boat Program

26 Foster Intentionally Damages or Destroys the Dive Boat Program

27 Trade Secret and Confidential Information
 28

The PTS-Foster Relationship

10. PTS was introduced to Sonia Foster in 2004 and retained her to provide government contract marketing and other services necessary to sell select boats and craft to the Navy via enrollment in the federal General Services Administration Schedules Program. Under this Program the GSA establishes long-term government-wide contracts that allow its buyers to acquire a wide array of products and services directly from commercial suppliers, avoiding normal government procurement solicitation procedures. This GSA Schedules Program (also sometimes "Multiple Award Schedules" and "Federal Supply Schedules") consists largely of the Federal Price Lists which form part of the private contractors' GSA contracts.

11. The product initially discussed was chartering tug boats to the Navy (a maritime lease arrangement). PTS paid Ms. Foster \$2,000/month for these services in late 2004 – early 2005. This arrangement was memorialized on or about February 3, 2005, in a document provided by Ms. Foster entitled "Subcontractor Agreement", between Foster Group and PTS. "Client" PTS agreed to compensate Foster at the rate of \$2,500/month plus expenses, and with a 2% commission on sales generated through her. This agreement was modified by three more identical agreement documents over the course of their 5-year relationship with the only difference being that Foster's base compensation escalated over that time, reaching \$15,000/month in August 2008. It was in essence a single multi-year marketing relationship directed at long-term goals not achievable in a single year. Ms. Foster told PTS that she was sole owner of Foster Group. All significant discussions, representations, and agreements for Foster Group described in this complaint involved Ms. Foster personally. The person at PTS she most often spoke with was vice-president Stephen Frailey who was in charge of the program.

12. The agreement document did not describe the details of the services to be provided by Foster Group, and includes only this very general statement:

NOW THEREFORE, the parties agree as follows:

13. The details of the services the parties agreed Foster would provide, and what Foster actually did provide in their course of dealing over the next five years, include:

a. Enrolling PTS in the GSA Federal Schedules Program for commercial products and services, in order to allow PTS to sell/lease ship-assistance tug boats and (later) workboats to the Navy through this increasingly important avenue for such sales.

b. Handling all paperwork and GSA interface required by that program. This included being designated as PTS's sole point of contract to the GSA for the entire duration of their relationship. Sonia Foster insisted that she be the only person to handle communication with GSA personnel and auditors, during audits or routine communications, and that she have sole responsibility for processing and updating PTS's GSA Federal Price List.

c. Formulating and implementing a comprehensive federal sales marketing plan for PTS's sales of tug boats and workboats to the Navy end-users which Foster said it could identify.

d. Promoting PTS's services and reputation to the relevant Navy program managers and end-users.

e. Identifying Navy program managers and end-user commands (ordering

1 activities) that wanted to buy tug boats or workboats off the GSA Schedule; developing,
2 with the aid of retained lobbyists, Congressional earmark or other federal funding
3 specifically targeting the funds for purchase of that product; and working with the Navy
4 program managers and end-users to assure PTS was awarded the contract for which the
5 funds were provided.

6 f. Working with the Navy program managers and potential end-users at the
7 inception of this process, introducing them to PTS and its facility and to the actual boat
8 building subcontractor intended to be used, so that the Navy program managers and
9 end-users could strongly support the funding request and would be inclined to select
10 PTS as the future contractor to be paid from the funding Foster was generating for them.
11 Ms. Foster agreed to use her reputation and influence at the program managers and end-
12 user level to generate, as she characterized it, a "cradle to grave" funding stream
13 targeting her client contractors.

14 g. Working with key Congressional staff within the normal custom and
15 practice of requesting ear-marks or other funding directed specifically to a project to be
16 included in marked-up funding bills.

17 h. Identifying the amount of funds available to the procuring facility for the
18 program and assuring that PTS's bid price does not exceed that amount. Foster would
19 unilaterally set the price to PTS usually saying this is what you must bid, allowing very
20 little if any deviation by PTS or its subcontractor.

21 i. Monitoring and physically handling the Navy's order solicitation process for
22 PTS's program, and drafting PTS's solicitation responses in a timely fashion -
23 culminating in generating a finished solicitation response for PTS to sign and return to
24 Foster to submit (or to submit directly after signing).

25 14. Foster directed PTS to pay, in addition to the payments to Foster described
26 above, fees to lobbyist firms that she would select. Although PTS would sign an
27 agreement with the lobbyist firm directly, Foster would hire and fire/non-renew them at
28

1 her discretion. These directed payments totaled approximately \$500,000 over the entire
2 period. The purpose was to facilitate the ear-marking process for program funds, and to
3 provide information to Foster as to the status of the program within Congress and
4 within the Navy.

5 15. Ms. Foster told PTS many times that she had a "100% success rate" for her
6 clients; that every client project that became funded ended up with a contract award to
7 that client. She attributed this to the high level of good will and trust she had
8 personally generated with the targeted Navy program managers and end-users, and the
9 benefit of getting them involved with the funding request process from the inception,
10 with introductions to the potential contractors. She told PTS that a Navy representative
11 would usually inspect the facilities of the likely contractors and meet with them prior to
12 supporting the funding request that would get the cycle started. The representative
13 could be from PEO Ships, PMS325, CCD (Combat Craft Department), or the end-user.
14 And this is the process that occurred for the tug boat and dive boat programs Foster
15 implemented for PTS.

16 16. Foster said that it would represent only one contractor for each category of
17 sale, such as PTS's tug boats and, eventually, dive boats; and promote only that single
18 contractor to the Navy program managers and end-user. Foster promised to represent,
19 and said it was representing, only PTS for its two programs. In light of the large
20 financial investment Foster demanded of PTS for the programs exclusive representation
21 was a crucial premise of the relationship.

22 17. PTS had no prior experience with the GSA Schedules Program or with
23 selling boats in this fashion; nor had it any experience with Washington D.C. program
24 funding or lobbying. Ms. Foster touted her extensive expertise in all these areas, as well
25 as her close and influential relationship with key Navy program people. She
26 demonstrated to PTS substantial input into the acquisition process and privileged
27 access to decision-makers. For this she demanded from PTS increasingly high fees.

28 18. The agreement documents granted Foster a 2% commission on these sales.

1 However, for the first 3 tug boats they agreed to reduce the commission to 1% due to the
2 low prices awarded, and this is what was paid. They agreed that the rate would revert
3 to 2% on the 4th and subsequent tugs.

4 19. PTS is referred to as the "Client" in the agreement documents. Foster
5 warrants: " 15. Warranty. [Foster] warrants to the Client and its customer that services
6 will be performed in a first class, workmanlike manner."

7 **The PEO Ships Program**

8 20. Foster's expertise and ability to generate good will with the Navy program
9 managers and end-users was particularly relevant in light of the new Navy procurement
10 policy implemented in the targeted program offices, which shifted acquisitions over to
11 the GSA commercial list process (and away from the standard open solicitation
12 procurements of most federal contracting) and also granted more purchasing autonomy
13 to the command. Foster navigated the intersection of two Navy commands, the GSA
14 Schedules Program, and funding origination.

15 21. The main purchasing command involved in this action lies within the
16 Navy's Program Executive Office, Ships (PEO Ships). It was established as part of the
17 realignment of the Secretary of the Navy effective late 2002, to create a stronger
18 business focus with more flexible acquisition management. Part of the mission is to
19 identify high quality builders to work with the Office and the Navy to provide best value.
20 The mission of the office for Support Ships, Boats, and Craft under the Program
21 Executive Officer ("PMS 325") is delivery of a large number of support ships, boats and
22 craft to operating forces of the U.S. Navy, to the Military Sealift Command, and to
23 foreign military sales customers. The Program Office handles the acquisition of vessels,
24 boats, and platforms, including "Boats, Craft, and Seaborne Targets," among many
25 other types.

26 22. Division PMS325G procures U.S. Navy boats and a different activity, the
27 Combatant Craft Department (CCD) of NAVSEA's Carderock Division, NSWCCD
28 Detachment Norfolk, provides life cycle support and manages the boat inventory in

1 support of PMS325. PMS325G and CCD determine the specific fleet requirements and
2 OPNAV priorities, and execute acquisitions to fill the requirements. These two
3 commands are Foster's primary targets. PMS325G works with the OPNAV Requirement
4 and Resource Sponsors and executes the boat budget, acquiring boats to fill specific
5 fleet requirements based on priorities set by and funding provided by OPNAV. CCD
6 works with the boat custodians and their chain of command, helping them as they
7 articulate detailed boat operational requirements. The boat requirements are sometimes
8 filled with existing boat assets, and are sometimes filled with newly acquired boats.
9 CCD also provides acquisition technical support and issues the boats to custodian
10 activities to fill authorized boat allowances.

11 23. Formerly, boats were typically procured using Small Business Set Aside,
12 Firm Fixed Price contracts. The boat design requirements were defined by fairly detailed
13 drawings and building specifications. Since approximately 2002 procurement of most
14 boats and small craft has been conducted through commercial acquisition channels
15 using the established contracts on the GSA Schedules Program (Federal Supply
16 Schedules). The procurement of small quantities for specific users provides
17 opportunities for the designs and configurations to be more specifically tailored to the
18 individual missions of those users. The premise is that this streamlined acquisition
19 approach reduces acquisition costs, speeds up the process, increases flexibility, and
20 produces "best value."

21 24. This change in acquisition method provided an opportunity for a private
22 program packager like Foster to identify the need for particular boats, help develop
23 tailored specifications, cost estimates, and funds; then provide those boats via its pre-
24 approved/selected contractors to PEO Ships (PMS325) according to the GSA price
25 schedule in a manner avoiding most of the traditional procurement competition. Foster
26 also worked closely with CDD. In some instances, geographical proximity of the
27 shipyard was deemed of high value to the end user or to the originator of the
28 earmark/funding, which further restricted competition. The ordering activities

1 understand that Foster is often largely responsible for delivering the targeting funding
2 for these purchases. In summary, it is this group of services that Foster offered,
3 promoted, and provided to PTS and the Navy. PTS, as the sole client for its two
4 marketing programs, funded nearly all of the development expenses associated with
5 them.

6 **Foster-PTS Program Development**

7 25. PTS and Foster started out in 2004-05 working together on a tug boat
8 charter opportunity (a maritime lease) with the Navy end-user, NAVSEA's Northwest
9 Regional Maintenance Command, in which PTS would upgrade old tugs and charter
10 them back to the Navy. This was later changed in early 2006 to a conversion contract
11 in which PTS upgraded and refurbished the tugs but turned them back to the Navy
12 without a lease. Foster designated the subcontractor PTS was to use, JM Martinac
13 Shipbuilding Corp. ("**Martinac**") of Tacoma, Washington. It turned out that Martinac
14 was also a client of Foster. (Due to facility limitations Martinac referred that conversion
15 work to another company but has fully participated on the *new* tug sales program.)
16 Later that year the Navy decided that future tug boat acquisitions under this program
17 would be of new boats only. In 2007-08 PTS was awarded contracts to construct and
18 deliver 4 new tug boats (the last contract signed August 14, 2008), two of which have
19 been substantially completed to date. In January 2010 PTS made final delivery of the
20 first tug boat to the Navy, to glowing reviews. By all accounts the Navy is extremely
21 pleased with the quality of the work and with the program in general.

22 26. Foster got PTS placed with a GSA commercial product Price List contract in
23 approximately October 2005 and has maintained PTS on the list since then until the
24 events beginning in July 2009 described below. The tug boats were listed, and so are
25 the dive boats which represent the second program handled by Foster.

26 27. The Navy ordering activity has said that it is ready to solicit two more tugs
27 under the GSA Schedules Program (#s 5 & 6 in sequence), and Ms. Foster earlier told
28 PTS that PTS should expect to receive the award. However, that solicitation has been

1 held up, without public explanation, since Foster began scheming to undermine PTS's
2 position in the tug program.

3 28. On approximately July 1, 2005, Foster and PTS launched a marketing
4 campaign for a second boat product line in addition to the tugs. Foster doubled its fee
5 accordingly. Initially this line was to consist of selling fuel oil barges but then was later
6 changed to dive boats because of better opportunities, according to Foster. Navy dive
7 boats are specialized to assist diving operations. Foster designated the subcontractor
8 that PTS had to use, the boat builder GEO Shipyard; but Foster later unilaterally
9 dismissed GEO Shipyard and replaced it with builder Metal Shark who became PTS's
10 subcontractor for the dive boat bid in 2009. Foster prepared the entire proposal
11 document for the dive boat submittal in September 2009. The Navy representative for
12 the buyer met with Foster, PTS, and Metal Shark to say that they would receive the
13 award but requested some design changes and more information; but then before
14 awarding it added a 3rd boat and re-opened the solicitation. The award decision has
15 been delayed, without public explanation, in the period since Foster began scheming to
16 undermine PTS's position with the Navy.

17 29. Foster never complained about PTS's performance or ever asserted any
18 contract breach during their 5-year program.

19 **Foster Attempts to Sabotage PTS's GSA List Contract**

20 30. Ms. Foster maintained close, private control over PTS's entire GSA
21 relationship. Ms. Foster would request information from PTS about matters related to
22 the Price List or audit questions but would never allow PTS to meet with the GSA auditor
23 or communicate directly. Even for audits on PTS's premises Ms. Foster would issue
24 stern instructions for no one else to be in the room or communicate with the auditor.
25 For the entire relationship she demanded and had on file with the GSA a point-of-contact
26 instruction from PTS to the GSA that listed only her. PTS never saw, or had a clear idea
27 what was on its GSA list, other than that it was to include its general services and the
28 tug boat and the dive boat items. After some of the on-site GSA audits Ms. Foster made

1 mysterious comments to PTS suggesting she had performed a valuable service finessing
2 some (mysterious) issue with the auditor regarding PTS, but never clarified what this was
3 supposed to mean. This was in keeping with Ms. Foster's assiduously cultivated air
4 throughout the entire program of control and mystery about the details of how and what
5 exactly she was doing on PTS's behalf.

6 31. With respect to the GSA Schedules Program in general, the only working
7 contact with PTS that Ms. Foster maintained was Kristin Michaels (sometimes now
8 known by her recently married name Kristin "Anderson"), vice president of accounting
9 and contracts manager, who had become by 2009 PTS's primary contact with Ms. Foster
10 for the GSA and on a range of government contract administration matters. Ms.
11 Michaels would provide financial and pricing information to Ms. Foster in conjunction
12 with auditing events and government contracts in general. Ms. Michaels departed PTS
13 without notice in January 2010 to go to work for Foster. She had been developed and
14 supported within PTS for many years, attaining a position of great trust and
15 responsibility at PTS.

16 32. It now appears clear that in the summer of 2009, Foster decided to jettison
17 PTS with respect to both the tug boat and dive boat programs. As part of that process
18 Sonia Foster intentionally jeopardized PTS's GSA Price List contract. This contract is the
19 essential pre-condition to competing in the Navy's PEO 325G tug boat and dive boat
20 programs. The contract was due to expire in March 2010 with a GSA option to renew,
21 but a long lead time was necessary to go through the GSA's vetting process to be
22 approved for renewal. This involves audits and general review. The responsible GSA
23 contract specialist e-mailed Ms. Foster in July 2009 to determine whether PTS desired to
24 have the contract extended and, if so, to make the necessary scheduling arrangements.
25 He contacted only her because she was and had been for the past four years PTS's sole
26 listed point of contact for the GSA. He gave her a deadline of August 20 for PTS to
27 respond. She did not respond. On August 21 he sent to her by FedEx courier another
28 letter, to which she waited until September 17 to respond by telephone. She told him

1 that "because of non compliance, she no longer represented" PTS and that he must
2 contact PTS directly. She did not give him the direct contact information and concealed
3 these communications from PTS.

4 33. Three and a half months later, in January 2010, after several failed
5 attempts to contact PTS the GSA contracts specialist received an e-mail address from the
6 GSA auditor for the PTS account of a new contact, Kristin Michaels vice president of
7 accounting. However, Ms. Michaels had been invited by Ms. Foster to come to work for
8 her, unknown and undisclosed to PTS by either of them, and in an apparently collusive
9 fashion failed to report this urgent communication from GSA to PTS. She resigned
10 without warning on January 21. In light of these circumstances, the GSA has granted
11 PTS a short extension of its GSA contract (to September 20, 2010) to allow time for the
12 normal vetting process that is a pre-condition to an option renewal.

13 34. It turns out that well before the formal severing of ties between Foster and
14 PTS on January 13, 2010, and before her confederate Ms. Michaels departed to go to
15 work for her on January 21, Ms. Foster bragged to another of her clients about having "a
16 mole" within PTS, whom she identified as Ms. Michaels. Neither Foster nor Ms. Michaels
17 informed PTS that the GSA was trying to contact PTS or that its entire GSA contract was
18 in jeopardy. Meanwhile, Foster continued to bill PTS and has asserted billings over this
19 July'09+ period under its contract with PTS, totaling approximately \$200,000. And this
20 was despite the fact that GSA schedule maintenance was Foster's core responsibility and
21 foundation for the entire marketing program.

22 **Foster's GSA List Fabrication - Phantom Competition**

23 35. After Foster's termination and in the course of review of PTS's Federal Price
24 List (sometimes referred to as "schedule") with the GSA auditor, it has come to light that
25 Foster had placed items on PTS's schedule dated September 10, 2008, that were not
26 being sold by PTS, had nothing to do with PTS's business, and were placed there
27 without PTS's knowledge. They include but are not limited to: PTS-F8-NE880-OB-001-
28 G [Rigid Hull Inflatable Boat]; PTSLRAD-500X [a sonic repelling device]. PTS is seeking

1 access to the other schedules Foster submitted in its name but it believes, and thereon
2 alleges, that Foster regularly added improper items.

3 36. PTS is informed and believes, and thereon alleges, that Foster used PTS's
4 schedule for the benefit of other clients of hers who were seeking to sell through the
5 GSA Schedules Program. A common pre-condition for a government purchase of the
6 schedule is that at least 3 listings for the same product be evaluated. It appears likely
7 that Foster placed some items on PTS's schedule for the sole purpose of creating
8 phantom competition -- the appearance of 3 listings when in fact PTS's listing was
9 entirely bogus.

10 37. In one instance Foster approached a different client and explicitly stated
11 she was going to place its GSA-listed product on a different contractor's list because
12 that would somehow help the cause. That contractor objected and fired her. That item
13 showed up on PTS's 9/10/08 Price List as listed above, as PTSLRAD-500X.

14 38. A federal procuring activity must use the GSA multiple award schedule
15 system for commercially available products. All the Foster programs involve sales
16 within this system, including tug boats and dive boats. The activity must survey at
17 least three Schedule contractors through the GSA *Advantage!*® online shopping service
18 or review the catalogs or pricelists of at least three Schedule contractors in making their
19 selection. This requirement is set out in the Federal Acquisition Regulations (FAR), and
20 in particular in Subpart 8.4 – Federal Supply Schedules; and also in the corresponding
21 DoD FAR Supplement (Subpart 208.4 – Federal Supply Schedules).

22 39. The DoD's explicit purpose in maintaining the minimum 3-contractor
23 review is to enhance competition, as explained in response to this comment generated
24 during the last modifications to these regulations during rulemaking for the pertinent
25 DFARS rule (71 Fed.Reg. 14106, 48 CFR Parts 208 and 216, March 21, 2006):

26 2. Comment: Recommend removing the requirement to
27 obtain three proposals when ordering supplies under GSA's
28 Federal Supply Schedule program, because the requirement is
unduly burdensome and administratively wasteful.

1 DoD Response: Do not agree. DoD has adopted this policy
2 to place the appropriate emphasis on competition and to ensure
3 that DoD can continue to use Federal Supply Schedules to meet
4 future requirements.

4 40. In hindsight, it is now clear to PTS that Foster was using PTS to create
5 phantom competition in (at least) two different ways. One was for Foster to place an
6 item on PTS's Price List without PTS's knowledge, as described above. A second method
7 was to have PTS submit a 1-time bid for an award outside its product line which Foster
8 knew PTS would not win, in order to assist her other clients meet the minimum
9 competition requirements with respect to that item. One example is the Range Support
10 Craft in 2008, an item Foster demanded that PTS bid on and which, it appears, Foster
11 placed on PTS's Price List. Foster dictated the price to be bid by PTS for this item, gave
12 PTS and its Foster-designated potential subcontractor an unrealistically short time to
13 evaluate the bid, and that item was something outside any product line PTS has
14 considered before or since. PTS complied, viewing this as an unusual "one-off"
15 exercise, and gave it no further thought after Foster told PTS the award went to another
16 bidder. PTS is informed and believes, and thereon alleges, that the other contractor was
17 a Foster client. The Range Support Craft item appears on PTS's September 10, 2008,
18 Federal Price List, which PTS has been able review recently for the first time.

19 41. As with the Range Support Craft, Foster from time to time would insist that
20 PTS bid on something outside its normal business line, always on a rush basis with
21 overtones of secrecy and urgency. For example, in September 2008 Foster typed up a
22 bid letter for office printer supplies to NNRSW, Regional Force Protection, for \$33,370.
23 It e-mailed this to PTS requesting that PTS print it out on its letterhead, sign, and
24 return to Foster (or possibly submit directly). While this letter quote did not mention
25 the GSA schedule, in retrospect it appears likely to be part of Foster's general phantom
26 competition scheme.

27 42. PTS found Foster's occasional "urgent" bid demands inconvenient and long-
28 shots at best. Nothing ever came of them. The primary impression left with PTS was

1 that that Ms. Foster was merely making a show of her marketing tenacity to impress her
2 high-paying client (PTS), and so PTS tolerated these inconveniences and costs in order
3 to placate her. It now appears, from the information that has come to light recently,
4 that Foster was using PTS in a fictitious competition scheme.

5 43. This activity was an unauthorized use of PTS's GSA schedule, a fraudulent
6 waste of PTS's time and resources, and placed PTS in jeopardy of investigation and
7 reputational damage by association due to the unethical, and probably illegal,
8 circumvention of the competition requirements of the GSA schedule procurement
9 process.

10 44. Further, on information and belief, PTS alleges that Foster was engaging in
11 this practice with most of her clients, using their various schedules to post bogus
12 Federal Price List items in order to create phantom competition sufficient to meet
13 Federal procurement competition requirements. This scheme would enable Foster to
14 achieve the "100% success rate" that Ms. Foster generally boasted about. Two phantom
15 high or unqualified listings would satisfy the competition requirement and leave her
16 intended client the winner by default.

17 45. PTS is informed and believes, and thereupon alleges, that by mid-2009 at
18 the latest Ms. Foster secretly decided to replace PTS with a different contractor client,
19 Maybank Industries, LLC of Charleston, So. Carolina. She began collaborating with
20 Maybank to take over PTS's position in tug boat and dive boat programs. PTS was and
21 had always been in complete compliance with its obligations to Foster under these
22 programs and was performing well. Foster's decision was apparently based on only its
23 belief that the other company presented a more lucrative business opportunity.
24 However, Foster did not disclose its decision to terminate PTS until January 13, 2010.
25 In this six month (or longer) interval Foster continued to collect large fees from PTS who
26 believed it was being exclusively represented by Foster.

27 **Foster Intentionally Damages or Destroys the Tug Boat Program**

28 46. The 5th and 6th tug boats in the tug boat program are ready to go out for

1 bid to GSA schedule holders, but have been held up without explanation in the Navy's
2 procuring office for the last few months of 2008 and early 2009. During this period,
3 which is after Ms. Foster first began attempting to cause PTS to lose its GSA schedule
4 contract, she began preparations to eliminate PTS from the tug boat program. She
5 entered into discussions and an agreement with another shipyard, Maybank Industries,
6 LLC of Charleston, So. Carolina, to be her client for receiving the award of tugs #s 5 & 6.
7 Meanwhile she was collecting large fees to exclusively represent PTS on the tug
8 program.

9 47. During the week of January 4, 2010, Ms. Foster met twice with PTS's
10 subcontractor and builder of the tugs, Martinac, at the Munro Hotel, Tacoma,
11 Washington. Martinac was also a client of Foster. In face-to-face meetings she told
12 Martinac's principals that she was going to make sure that tugs 5 & 6 (that were about
13 to come out to bid) would be awarded to Maybank Industries, LLC as the prime
14 contractor and Martinac as the subcontractor. She conveyed that she could cause the
15 award to be made to the contractor she selected. She requested that Martinac facilitate
16 this plan by secretly quoting a price to Maybank Industries but giving PTS a higher
17 price. Foster knew at the time of her conversation that Martinac was under agreement
18 to team with PTS on tugs 5 & 6, and that she was still working for PTS as her sole client
19 on the tug program (or ought to be), and that PTS believed she was still exclusively
20 representing it on that program. On January 18, 2010, a boat building subcontractor
21 to Maybank Industries e-mailed Martinac seeking information about physical details of
22 the tug boats PTS and Martinac were building for the Navy.

23 48. On January 13, 2010, Martinac disclosed to PTS Ms. Foster's conversations
24 of the prior week, stating that its legal counsel advised them that her proposals were
25 probably illegal and that they should report this contact immediately to PTS. Martinac
26 immediately terminated its relationship with Foster. Late in the day of the 13th Ms.
27 Foster issued a short no-cause termination e-mail, stating in part, "Additionally, it is
28 with sincere regret that that I terminate services to Pacific Maritime Freight dba Pacific

1 Tugboat Services effective immediately."

2 49. Ms. Foster thereupon began a campaign of negative marketing against PTS
3 with the Navy. PTS is informed and believes, and thereon alleges, that she verbally and
4 in writing stated to her Navy contacts that PTS was not in compliance, was not reliable,
5 and was in poor financial condition ("insolvent"). Additionally, she distributed an e-mail
6 on February 18, 2010, to various program personnel at PEO Ships and to other
7 pertinent Navy contacts suggesting that she had filed some kind of request for
8 investigation with the GSA Inspector General's office regarding PTS. It also suggested
9 that "Mrs. Kristin Anderson" (formerly "Michaels", PTS's V-P of accounting) was
10 somehow involved in this complaint. Although the e-mail was not particularly coherent,
11 it is clear that Ms. Foster sought to create the impression that PTS (and Martinac who
12 was cited as named in the complaint as well) could not be trusted with the tug program,
13 and the intended and plausible effect would be to stop an award of tugs 5 & 6 to PTS
14 and divert that award to Foster's new team with Maybank Industries. For good
15 measure Ms. Foster mentioned that the Naval Criminal Investigative Service might be
16 investigating PTS. These statements are preposterously false. A JAG inquiry to the GSA
17 office and contact mentioned in the e-mail turned up no sign of any such request for
18 investigation. Although in theory any citizen can file paperwork asking the GSA to
19 consider investigating something, such a filing per se means nothing. Ms. Foster has
20 fabricated libelous allegations, dressed up as a pseudo-"investigation", and submitted
21 them to all the key Navy personnel for the tug and dive boat programs with the intended
22 and likely effect of tarnishing PTS's reputation and stopping or delaying award of tugs 5
23 & 6 to PTS.

24 50. PTS is informed and believes, and thereon alleges, that one of Foster's
25 purposes in keeping her change of allegiance secret from PTS was, in addition to
26 causing PTS to bid high and lose the award, to create an illusion of competition on the
27 tug boat solicitation sufficient to satisfy the minimum 3-bid requirement of the
28 governing regulations and policies. In contrast, if Martinac were to pull out of its

1 arrangement with PTS at the last minute, PTS might not have had time to find an
2 adequate replacement builder on short notice and therefore not have submitted any bid
3 at all.

4 **Foster Intentionally Damages or Destroys the Dive Boat Program**

5 51. Most of Foster's actions with respect to the tug boat program affected the
6 dive boat program as well. Some additional details relating only to the dive boat
7 program are that Foster attempted to sandbag PTS on the bid deadline of January 15,
8 2010, and cause PTS to miss the deadline and therefore be rendered ineligible for
9 award. The parties' agreement and practice was that Foster would calendar and
10 prepare the paperwork on every contract solicitation out for bid under their two
11 programs. The dive boat contract had already been bid for and nearly awarded to PTS
12 in the first round, as discussed above, but then went out to bid again with a change in
13 design and an increase from 2 to 3 boats. Foster prepared all the paperwork and
14 coordinated submittal for PTS's first bid. The revised bid was due on Friday, January
15 15. PTS contacted Foster several times in the interim reminding it that the bid was due
16 and asking if there was further information needed from PTS. As the deadline grew
17 closer Mr. Frailey of PTS sent more requests for assurance that the bid submittal was
18 on track and had not "dropped between the cracks." It was not until two days prior to
19 the bid deadline that Foster informed PTS that Foster did not intend to submit PTS's bid
20 contrary to the usual procedure.

21 52. Mr. Frailey received a disturbing call from Ms. Foster on the evening of
22 Tuesday January 12 in which she indicated that she was at some point soon going to
23 terminate her relationship with PTS. The proffered rationale seemed to have something
24 to do with PTS's financial condition and nothing else. This seemed odd because PTS
25 was in good financial condition and she had not expressed such concern before. It
26 seemed like a pretext to Mr. Frailey. The next day, Wednesday the 13th, he emailed her
27 reminding her that Foster was obligated to submit the dive boat re-bid that was due in
28 two days. After another telephone conversation she e-mailed him that evening her

1 intent to immediately terminate their relationship on the tug and dive boat projects
2 effective the 13th, and stated in effect that he was on his own for the bid due on the
3 15th. She did not offer to assist.

4 53. Two days was not enough time under the circumstances to properly
5 assemble and submit the bid, considering that PTS had been relying on Foster to
6 assemble all bid proposals throughout their entire relationship. Foster possessed much
7 of the key documentation, and PTS was unsure of the procedural details such as exactly
8 where to deliver the proposal and how. Foster intended to have PTS miss the dive boat
9 bid deadline and would not have warned PTS that Foster was not going to submit the
10 proposal on its behalf but for Mr. Frailey's persistent communications early that week
11 which forced the issue. Further evidence of this intent was Foster's decision to withhold
12 assistance to PTS regarding the substance or procedural mechanics of the submittal
13 process.

14 54. Foster was under contract to PTS all this time, collecting \$15,000/month
15 for performing these services, and Foster has since billed *an additional \$90,000* to PTS
16 as a post-contract termination bonus fee that Ms. Foster asserts she is entitled to for
17 her services prior to termination. These services pertained to a period in which she
18 secretly schemed against PTS while enjoying its complete trust and confidence. Her
19 demonstrated greed and ethical obtuseness, while particularly astonishing in this
20 instance, is woven throughout their entire relationship.

21 55. PTS missed the original Friday January 15 bid deadline. In its state of
22 shock and confusion it was unaware of the new bid delivery mechanics and new point of
23 contact for the government, and transmitted the bid to the wrong location. However, at
24 the last minute the Navy extended the deadline and PTS eventually transmitted its bid
25 to the correct location. There has been no word yet on the Navy's award decision.

26 56. As described with respect to the tug boat program, Ms. Foster has engaged
27 in a negative marketing campaign directed to her group of close Navy program contacts.
28 She has sought to undo the 5 years of marketing investment by destroying PTS's

1 reputation and good will with PEO Ships and pertinent end-user facilities.

2 57. With respect to the dive boat program Ms. Foster has gone beyond a
3 campaign of generally trashing of PTS's standing and ability to perform, to specifically
4 interfering with its subcontractor relationship. In February 2010 Ms. Foster repeatedly
5 directed and pressured PTS's boat building subcontractor Metal Shark to not honor its
6 bid to PTS to perform the dive boat contract, and to boycott PTS on future Navy
7 opportunities. Metal Shark is a boat builder that is also a client of Foster and naturally
8 is under great economic pressure to comply. Nevertheless PTS has attempted to
9 persuade Metal Shark to honor its commitments at least on the current project out for
10 bid, and it may be that Metal Shark will do so. But Foster wields enormous authority
11 over her clients, via practical control over the Navy's contract award process, and it
12 remains doubtful whether any client company can withstand the ruthless economic
13 pressure Foster can bring to bear upon those dependent on her. Foster and its clients
14 perform most or nearly all of certain categories of this small craft work for the Navy.

15 **Trade Secret and Confidential Information**

16 58. The record is barren of any complaint voiced by Foster regarding PTS's
17 performance or behavior, at least before Foster began conniving against PTS in 2009.
18 Even after that time Foster has not put in an e-mail or in other documented form (of
19 which PTS is aware) any significant criticism let alone an allegation of breach by PTS.

20 59. Six days after Ms. Foster's termination e-mail of 1/13/10, PTS's president
21 Ted Griffith (who had had very little contact with Foster), forwarded a courteous letter
22 requesting an explanation for the termination and asking for an opportunity to fix any
23 problem there might be. His January 19, 2010, letter:

24 Dear Ms. Foster,

25 I am President of PTS. I have reviewed your January 13
26 "termination" e-mail to Steve Frailey. I am now personally
27 investigating this matter and will do everything in my power to
28 address any of your concerns. Until I read your email I had not
heard of any problem whatsoever that you had ever expressed
regarding PTS's relationship with you. Therefore this comes as
quite a shock and out of the blue. I expect as matter of basic

1 business courtesy and ethics that you, our long-term partner in
2 these programs, give me the opportunity to explain and rectify any
misunderstandings.

3 **Please immediately provide me by e-mail with a written**
4 **summary of why you want to terminate PTS from the tug and**
5 **the dive boat programs, including any concerns and questions**
6 **you may have.** While I realize you have had one telephone
7 conversation with Steve about this, it appears that the discussion
8 surprised him and he is not able to provide me a coherent business
9 rationale or explanation for your action. Therefore, I respectfully
10 request that you provide me a written explanation and afford us an
opportunity to repair the perception or circumstances giving rise to
this situation. This is all the more puzzling in light of our
spectacularly successful milestone accomplishment last Friday –
passing the acceptance trial for the first tug (subject to minor
punch list items). The Navy customer was obviously extremely
pleased with our product as you saw yourself.

11 This is a very serious matter and I expect your full and immediate
12 attention and cooperation.

13 Thank you,
14 Ted Griffith,
CEO and President

15 60. Foster has never responded with an explanation for termination nor has its
16 attorney who, 3 weeks later, wrote a letter to PTS saying that Mr. Griffith's letter was
17 received and denying that Foster terminated PTS for an improper reason. Foster has
18 failed to explain its behavior in circumstances in which a guiltless actor, or ethical
19 business person, would explain and justify such serious detrimental action taken against
20 a 5-year, trusting client. This silence compels the conclusion that there is no
21 justification.

22 61. On January 28, 2010, having received no response to its letter of the 19th,
23 PTS issued a longer letter to Foster setting out its belief that Foster was working against
24 it to divert work to other clients and using its trade secret information. PTS also
25 requested Foster's assistance during this transition and for copies of the files, as
26 excerpted as follows:

27 1. Request For Immediate Turn-Over Assistance On The Navy Tug
28 Program.

1 Provide status turn-over information regarding the Navy tug program.
 2 Provide a written status report on every aspect of the tug program
 3 pertinent to PTS. Include a list of your contacts on this program so PTS
 4 may introduce itself and get up to speed. Of particular importance is
 information related to the status of the program audit, including any
 pending audit, by the GSA or Navy.

5 2. Request For Immediate Turn-Over Assistance On The Dive Boat
Program.

6 Provide status turn-over information regarding the dive boat program.
 7 Provide a written status report on every aspect of the dive boat program
 8 pertinent to PTS. Include a list of your contacts on this program so PTS
 may introduce itself and get up to speed.

9 3. All Your Correspondence And Records Pertinent To PTS's Projects

10 Provide all of all documents generated by you or received by you,
 11 pertinent to PTS, on the tug boat and dive boat programs while you were
 12 under contract with PTS. This is work product paid for by PTS to which
 13 it is entitled. This includes but is not limited to e-mail (with
 14 attachments) to/from the Government.

15 4. All documents, e-mail, and electronically stored information related to
PTS.

16 You are obligated immediately to return all paperwork, files, documents,
 17 e-mail, notes, and electronically stored information you acquired in the
 18 course of your relationship with PTS. This includes copies. It would be
 19 illegal for you to keep or use any proprietary or trade secret information
 20 or media.

21 5. Do Not Divulge Trade Secret Or Confidential Information, Or Use It
Against PTS.

22 You have extensive knowledge of PTS's trade secrets and confidential
 23 business information regarding the Navy tug program and the Navy dive
 24 boat program. We trusted you completely and gave you access to our
 25 most confidential records. (You also reviewed them pursuant to your
 26 professed interest in buying an equity position in PTS.) You had primary
 27 responsibility for administering the tug and dive boat programs.

28 You have boasted to Martinac that you had "a mole" inside PTS, and that
 it was our VP of accounting and contracts, Kristin Andersen, and said
 she was giving you confidential information. It was during this period
 that you were attempting to subvert PTS's position under the tug and
 dive boat programs, and you were in constant contact with Kristin. Now
 Kristin has mysteriously and abruptly resigned from PTS to go work
 supposedly somewhere in "New York" starting February 1st but she
 would not identify the new employer. Our concern is that you [have]
 been and intend to collaborate with Kristin to compete against PTS on
 the very programs on which both of you were working for us; and in fact
 both of you at this point know more about the administrative details and
 procedures of the tug program than any single one of us here. We

1 trusted you totally. You and Kristin have been given access to some of
 2 our key financial and pricing and trade secret information regarding
 3 these projects. Both you and Kristin resigned without notice, within a
 very short time of each other, leaving us in a state of crisis. This may
 have been intentional. Accordingly, PTS demands:

4 a. That you state whether you have made arrangements to
 5 hire Kristin (either as an employee or "independent contractor").

6 b. That you agree to not hire Kristin within the next six
 7 months. (Her and your knowledge of PTS and the tug and dive
 8 boat projects make use and disclosure of trade secrets inevitable.
 This will also allow PTS time to adjust to your near-simultaneous
 departures.)

9 c. That you never divulge PTS's trade secret or confidential
 10 information to anyone, or use it to compete against PTS with
 11 respect to the tug and dive boat programs. This includes all
 financial, pricing, management, and technical information you
 have seen regarding PTS.

12 d. That you not compete against PTS on tugs #5 and #6 in the
 13 tug program. This includes not aiding any other contractor to win
 this work.

14 e. That you not compete against PTS on the dive boat program
 15 for the pending solicitation. This includes not aiding any other
 16 contractor to win this work.

...

17 62. Foster has refused to provide any of the assistance, materials, or
 18 assurances requested by PTS in its above quoted letter. Foster's only response was the
 19 denial by its attorney in a short letter to PTS dated February 11, 2010, which stated,
 20 regarding those requests:

21 ... The Foster Group has strived to comply with the law on both
 22 programs, and your allegations to the contrary are
 23 unsubstantiated and unfortunate. Further, The Foster Group is
 24 under no obligation to comply with your letter's list of demands
 relating to the production of documents and reports to PTS. The
 Foster Group understands its obligations under the agreement,
 25 and does not intend to divulge any trade secrets or confidential
 business information to your competitors for the purpose of
 26 competing with PTS. ...

27 63. Foster's refusal to assist PTS during this transition phase or provide
 28 documents and information during the turnover reflect its animus, continuing breach of

1 the essence of their agreement, the lack of good will and cooperation, and indicate the
2 likelihood of an ongoing cover-up. In summary by category, (1) Foster refuses to aid PTS
3 to get up to speed on the tug program by providing pertinent documents and contacts.
4 Foster was working as PTS's agent and confidante on these programs, and PTS was
5 wholly funding this effort. Foster shared gross sales on a percentage commission basis
6 and received a large monthly fee plus substantial monthly expenses. Ms. Foster refuses
7 to provide information regarding her GSA file and notes for PTS. The denial of assistance
8 with the dive boats under request (2) invokes the same considerations. PTS as the fully
9 funding client is entitled to all PTS-related documentation generated on its behalf by its
10 agent and representative Foster, pursuant to requests (3) and (4). PTS provided Foster
11 with all technical drawings and design plans for the tug boats which Foster is not
12 entitled to keep.

13 64. Item (5) asks Foster to not divulge trade secrets or use them against PTS.
14 PTS's counsel splits hairs in its response here: it says Foster will not divulge trade
15 secrets to PTS's competitors but does not say that Foster will not use them itself in
16 putting together competing bids with PTS's competitors. That is the crux of the problem
17 -- Foster's use of PTS's inside business and financial information to construct
18 competitive teams on the two programs, from which Foster would likely receive
19 compensation and share in revenues on its normal commission basis. Foster hired Ms.
20 Michaels and necessarily will use the confidential information Ms. Michaels possesses by
21 virtue of her sensitive position with PTS and similar position with Foster. Foster, via her
22 counsel's letter reply, in effect states its intention to violate each of the sub-requests
23 (5)(a) through (e) (other than divulging trade secret information to a competitor).

24 65. By virtue of her central role in PTS's affairs in these programs Ms. Foster
25 was routinely provided or reviewed PTS's trade secret and confidential information, as set
26 out above. But Ms. Foster drilled even deeper into PTS's affairs. She requested and
27 gained access to all of PTS's financial and business records in approximately August –
28 September 2009 under the guise that she was interested in investing in PTS. PTS and

1 one of its owners had been negotiating with another party regarding a possible buy-out
2 of his position, and an extensive due diligence file had been compiled by their CPAs and
3 others. Ms. Foster requested permission to review that file and examined it closely.
4 Again, this was in the period when she had already decided to terminate PTS.

5 66. Kristin Michaels' sudden departure and collaboration with Ms. Foster
6 presents a sad footnote to these proceedings. In essence, Ms. Foster induced this young
7 (27 year old) employee to turn against the only employer she had known in her short
8 career, one who had treated her as a member of the inner "PTS family" circle and who
9 had nurtured her education and development to a high level of responsibility and trust.
10 She was originally hired into the PTS organization by its senior partner, President and
11 CEO Ted Griffith, when she was in her late teens with no post-high school training.
12 Both Kristin and John Anderson, her significant-other and future husband, had recently
13 moved to California from Arizona and had limited job prospects. Over time both Kristin
14 and Mr. Anderson received substantial financial assistance from PTS toward education,
15 licensing, and housing needs – and recent wedding gifts. Mr. Anderson was originally
16 hired to an entry level position and, with company support, eventually became a licensed
17 "master of vessels," a highly coveted and respected position in the maritime industry.

18 67. Kristin rose to a department head and officer within PTS with largely
19 unsupervised autonomy over a wide range of business and financial matters including
20 banking, various accounts, human resources, employee benefits, federal, state and local
21 regulatory compliance on a wide range of issues. She eventually held the positions of
22 vice president of accounting, and contracts manager. Kristin was the sole point of
23 contact for many of PTS's government compliance sites and maintained access and
24 password information that no one else knew. With respect to the GSA contract, Kristin
25 was Ms. Foster's only routine working contact with PTS. As described above, Ms. Foster
26 was the sole point of contact and "face" of PTS to the GSA. By 2009, Kristin had become
27 PTS's primary information contact with Ms. Foster for the GSA contract and for other
28 contract administration and financial matters. For example, Kristin would provide

1 financial and pricing information to Ms. Foster as requested by Ms. Foster in response to
2 GSA information requests.

3 68. When Kristin departed on January 22, 2010, to go to work for Ms. Foster
4 she gave no prior notice, did not disclose passwords to government sites or other internal
5 computer programs, had not disclosed to PTS that the GSA was urgently trying to
6 contact PTS because the time for renewing the GSA Federal Price List contract was
7 expiring; nor did she provide any other assistance to aid in the transition. She left no
8 forwarding address or contact information. She did not reveal she was going to work for
9 Foster. Her actions and omissions, in combination with Ms. Foster's earlier touting of
10 Kristin as her "mole" within PTS, compel the conclusion that all of PTS's key financial,
11 proprietary, and trade secret information is now available to her new employer.

12 69. PTS's trade secrets and confidential information of which Foster is in
13 possession includes but is not limited to: PTS's internal cost structure for both
14 programs; PTS's basic financial statements; strengths and weaknesses of PTS's facility
15 and boat building operations; the marketing plan developed with Foster regarding the
16 two lines of business; what the Navy customer has communicated to both Foster as
17 PTS's agent and to PTS directly concerning the strengths and weaknesses in its
18 proposals; other funding opportunities and needs for these two Navy programs (this is
19 information paid for and generated by PTS's fees and payments); GSA concerns and
20 program status; technical drawings and design plans for the tug boats; and related
21 matters.

22 70. The series of agreement documents executed by the parties bars Foster
23 from using any information provided to it by PTS, and designates all such information to
24 be the property of PTS:

25 14 . Use of Information. [Foster] agrees that the Client's property
26 or any idea, data, program, technical, business or other intangible
27 information, however conveyed, and any document, print, tape,
28 disk, tool, or other tangible information owned or controlled by
Client, and provided to, or acquired by [Foster] under or in
contemplation of this Agreement (hereinafter "Information") **is the
exclusive property of the Client. [Foster] shall keep**

Information confidential and use it only in performing the Services under this Agreement and obligate its employees, subcontractors, and other working for it to do so also. The foregoing shall not apply to such portions of the Information supplied by Client which (i) are already in [Foster's] possession or of which it is aware, (ii) are or become generally available to the public through no fault or action by [Foster], (iii) are or become available to [Foster] on a nonconfidential basis from a source, other than the Client, which, after due inquiry, is not legally prohibited from disclosing such Information, or (iv) [Foster] is compelled to disclose by competent legal authority. [Emphasis added.]

This clause makes clear Foster's obligation to return its Client's files and the obligation of Foster not to use anything from those files for its own account.

FIRST CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY (GENERALLY)

(As Against All Defendants)

71. PTS realleges and incorporates herein by reference the allegations of Paragraphs 1 through 70, *supra*.

72. By virtue of their central role and key responsibility in PTS's federal boat sales program and under their related agreements, Sonia Foster and Foster Group occupied a position of trust and confidence with PTS. By virtue of their position of trust, the Foster parties owed fiduciary duties of loyalty and confidentiality to PTS.

73. Under these circumstances, trust and confidence reasonably could be and was placed by PTS in the integrity and fidelity of the Foster parties.

74. Despite their fiduciary duties, Foster parties misused their position of trust to further their own interests at the expense of PTS in doing the things alleged hereinabove. Some of these actions include but are not limited to:

a. Foster abused the trust reposed in it by corruptly scheming against PTS while still under contract to PTS and while still embodying PTS's primary "face" to the relevant Navy and General Services Administration personnel, and causing PTS to be almost evicted from the government commercial sales program.

b. Foster attempted to cause PTS to miss the bid deadline for the dive boat

1 opportunity, while secretly working against PTS with a competitor – all while Foster was
2 exclusively representing PTS on the dive boat program.

3 c. Foster attempted to cause PTS's tug boat subcontractor to breach its
4 contract with PTS and collude with Foster against it to cause the pending award to go to
5 a competitor -- all while Foster was exclusively representing PTS for the tug boat
6 program.

7 d. Foster attempted, while still PTS's trusted agent, to rig the bids on the tug
8 boat sales program so that the Navy would receive an artificially high price from PTS and
9 award at a different price to a contractor controlled by Foster.

10 e. Foster has interfered with PTS's subcontractor relationships on both the
11 tug boat and dive boat programs, seeking to induce them to breach their subcontract
12 agreements or otherwise behave dishonestly or uncooperatively toward PTS.

13 f. Foster has destroyed nearly all value from PTS's \$1.5 million investment in
14 their 5-year boat sales marketing program. These actions include negative marketing
15 against PTS to its government customers and the spreading of libelous and damaging
16 information directly to the key Navy contacts, verbally and by e-mail. In light of Foster's
17 strong influence with key Navy contacts, the damage to PTS's position is complete.

18 g. Foster induced PTS's vice president of accounting to leave PTS and come to
19 work for Foster without notice and in a manner calculated to maximize damage to PTS's
20 operations and provide greater access to PTS's confidential information.

21 h. Foster continues to withheld documentation, files, and transition
22 assistance from PTS after it formally terminated PTS, in a manner intended and likely to
23 cause harm to PTS – despite the fact that PTS funded the entire 5-year marketing
24 program

25 i. Foster is using PTS's trade secrets and confidential marketing information
26 to compete directly against PTS with other contractors.
27
28

77. As a direct proximate cause of defendants' breaches, Plaintiff suffered damages as follows: the loss of most of its investment in the marketing program, in an amount exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future business; and as otherwise to be proven at trial.

78. The Foster parties' breach of fiduciary duties was willful and malicious and justifies an award of punitive damages.

SECOND CLAIM FOR RELIEF: BREACH OF FIDUCIARY DUTY (PHANTOM GSA LISTINGS)

(As Against All Defendants)

79. PTS realleges and incorporates herein by reference the allegations of Paragraphs 1 through 78, *supra*.

80. By virtue of their central role and key responsibility in PTS's federal boat sales program and under their related agreements, Sonia Foster and Foster Group occupied a position of trust and confidence with PTS. By virtue of their position of trust, the Foster parties owed fiduciary duties of loyalty and confidentiality to PTS.

81. Under these circumstances, trust and confidence reasonably could be and was placed by PTS in the integrity and fidelity of the Foster parties.

82. Despite their fiduciary duties, Foster parties misused their position of trust to further their own interests at the expense of PTS in doing the things alleged hereinabove. These actions are described in the Factual Background subsection

1 hereinabove, entitled " **Foster's GSA List Fabrication – Phantom Competition**".

2 83. As described, Foster was using and abusing PTS's GSA contract Price List
3 to create phantom competition in at least two different ways. One was for Foster to place
4 an item on PTS's Price List without PTS's knowledge. A common pre-condition for a
5 government purchase of the schedule is that at least 3 listings for the same product be
6 evaluated. It appears likely that Foster placed some items on PTS's schedule for the sole
7 purpose of creating phantom competition -- the appearance of 3 listings when in fact
8 PTS's listing was entirely bogus. A second method was to have PTS submit a 1-time bid
9 for an award outside its product line which Foster knew PTS would not win, in order to
10 assist her other clients meet the minimum competition requirements with respect to that
11 item.

12 84. This activity was an unauthorized use of PTS's GSA schedule, a fraudulent
13 waste of PTS's time and resources, and placed PTS in jeopardy of investigation and
14 reputational damage by association due to the unethical, and probably illegal,
15 circumvention of the competition requirements of the GSA schedule procurement
16 process. Further, on information and belief, PTS alleges that Foster was engaging in
17 this practice on a widespread basis with other clients.

18 85. By engaging in the acts described above, Foster parties misused their
19 position of trust and confidence, and their access to PTS's confidential information, to
20 further their own interests; and accordingly breached their fiduciary duties to PTS.

21 86. As a direct result of Foster parties' breach of their fiduciary duties, PTS has
22 suffered harm in an amount to be proven at trial. At the very least, Foster should
23 disgorge the funds paid by PTS and those expended under Foster's direction throughout
24 their relationship, as well as unjust enrichment. Foster should not be allowed to retain
25 funds achieved by a pattern of fraudulent competition which victimized the government
26 and squandered PTS's time and resources. PTS seeks an accounting and disgorgement
27 order with respect to funds received (via commissions or fees from other clients) related
28

1 to Foster's unauthorized use of its Federal GSA Price List.

2 87. The Foster parties' breach of fiduciary duties was willful and malicious and
3 justifies an award of punitive damages.

4 **THIRD CLAIM FOR RELIEF: BREACH OF THE IMPLIED COVENANT OF**
5 **GOOD FAITH AND FAIR DEALING**

6 (As Against All Defendants)

7
8 88. PTS realleges and incorporates herein by reference the allegations of
9 Paragraphs 1 through 87, *supra*.

10 89. The federal boat sales agreements between PTS and Foster include an
11 implied covenant of good faith and fair dealing between the parties. This implied
12 covenant imposed a duty on Foster not to do anything to deprive PTS of the benefit of
13 those agreements.

14 90. Foster's conduct, described above, was consciously and deliberately
15 designed to frustrate the benefits of the agreement. In the end, it resulted in destruction
16 of the essential purpose of the agreements. Independently of any breach of an express
17 agreement term, Foster has breached the implied covenant of good faith and fair dealing.

18 91. As a direct proximate cause of defendants' breaches, Plaintiff suffered
19 damages as follows: the loss of most of its investment in the marketing program, in an
20 amount exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future
21 business; and as otherwise to be proven at trial.

22 **FOURTH CLAIM FOR RELIEF: BREACH OF CONTRACT**

23 (As Against All Defendants)

24
25 92. PTS realleges and incorporates herein by reference the allegations of
26 Paragraphs 1 through 91, *supra*.

27 93. As described hereinabove, from 2005 through 2010 the parties operated
28 under a series of 4 nearly identical written agreements and oral agreements regarding

1 their multi-year boat sales marketing effort. The statement of work set out in the written
2 agreements was so vague as to be useless to a determination of the parties' agreement,
3 and their actual course of dealing and correspondence sets out their agreed terms as
4 described in the Factual Background subsection hereinabove, entitled "**The PTS-Foster**
5 **Relationship**". In general terms, Foster agreed to implement PTS's federal boat
6 marketing program with the Navy on an exclusive representation basis for PTS's two boat
7 categories, tug boats and dive boats. PTS agreed to pay to Foster a large monthly fee,
8 expenses, associated lobbying fees, and a commission on sales.

9 94. Their agreement documents provided: "15. Warranty. [Foster] warrants to
10 the Client and its customer that services will be performed in a first class, workmanlike
11 manner."

12 95. On or about July 2009, at the latest, Foster materially breached their
13 agreement by, in, and among other ways, scheming against PTS on both boat programs
14 and conspiring with its competitors to divert the pending awards away from PTS.
15 Further detail is set forth hereinabove and in the First Cause of Action for Breach of
16 Fiduciary Duty. Further, Foster abused PTS's Federal Price List by placing unauthorized
17 items on it as part of Foster's corrupt phantom competition scheme.

18 96. Foster has destroyed nearly all value from PTS's \$1.5 million investment in
19 their 5-year boat sales marketing program. These actions include negative marketing
20 against PTS to the government customers, spreading of libelous and damaging
21 information directly to the key Navy contacts, verbally and by e-mail. In light of Foster's
22 strong influence with key Navy contacts, the damage to PTS's position is complete.

23 97. Foster failed to perform its essential services "in a first class, workmanlike
24 manner."

25 98. Plaintiff has performed all obligations under said contract except those
26 obligations plaintiff was prevented or excused from performing.

27 99. As a direct proximate cause of defendants' breaches, Plaintiff suffered
28

1 damages as follows: the loss of most of its investment in the marketing program, in an
2 amount exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future
3 business; and as otherwise to be proven at trial.

4 100. Plaintiff is entitled to attorneys fees by agreement or statute, according to
5 proof.

6 **FIFTH CLAIM FOR RELIEF: FRAUD**

7 (As Against All Defendants)

8 101. PTS realleges and incorporates herein by reference the allegations of
9 Paragraphs 1 through 100, *supra*.

10 102. On or about July 2009, at the latest, Foster began to scheme against PTS
11 by denying to the GSA that Foster was representing PTS (and jeopardizing its GSA
12 contract) and collaborating with competitors to divert boat building awards away from
13 PTS. However, Foster lied to PTS and concealed material facts in order to induce PTS to
14 continue to pay Foster's \$15,000/month fee and expenses, and to continue to provide
15 information to Foster which Foster could use to its competitive advantage.
16

17 103. Ms. Foster did not tell PTS that she was arranging to terminate it, and
18 represented in innumerable instances in their normal working relationship that she was
19 working for PTS and that Foster was still doing everything necessary to make PTS's
20 program a success. By doing this Foster induced PTS to pay nearly another \$90,000 in
21 fees for six month's service, and afforded PTS less time to make other arrangements.

22 104. Foster made these false "business as usual" representations knowing of
23 their falsity, and it intentionally concealed the fact that Foster was working against PTS,
24 not for it. Foster intended that PTS would rely on these affirmative and concealed
25 falsehoods, which were material.

26 105. Plaintiff reasonably relied on these false representations and fraudulent
27 concealments in continuing to pay Foster the monthly program fees and costs, despite
28

1 the fact Foster was covertly working for PTS's competitors, and PTS continued to provide
2 its confidential information and business plans to Foster.

3 106. As a direct proximate cause of defendants' breaches, Plaintiff suffered
4 damages as follows: the loss of most of its investment in the marketing program, in an
5 amount exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future
6 business; and as otherwise to be proven at trial.

7 107. The Foster parties' breach of fiduciary duties was willful and malicious and
8 justifies an award of punitive damages.

9
10 **SIXTH CLAIM FOR RELIEF: INTENTIONAL INTERFERENCE WITH PROSPECTIVE**
11 **ECONOMIC ADVANTAGE**

12 (As Against All Defendants)

13 108. PTS realleges and incorporates herein by reference the allegations of
14 Paragraphs 1 through 107, *supra*.

15 109. Foster set out methodically to destroy PTS's economic relationships with
16 the Navy and PTS's subcontractors. It did this for the purpose of removing PTS as a
17 competitor to allow Foster to team with Maybank Industries in PTS's stead. Foster
18 breached its fiduciary and contract obligations to PTS to achieve this end, and used
19 PTS's trade secrets against it.

20 110. By these means Foster has intentionally interfered with PTS's existing and
21 prospective economic advantage with the Navy under the tug boat and dive boat
22 programs. Additionally, its negative marketing campaign to the Navy directed against
23 PTS has corroded PTS's good will and reputation with the relevant commands and
24 ordering activities. Foster has destroyed PTS's competitive advantage in procuring the
25 pending tug and dive boat awards and similar solicitations in the future as well.
26 Further, Foster is likely causing delay of the currently pending awards in both programs
27 in order to position her new clients for receipt of those awards.
28

1 111. The Foster parties were and are aware of the existence of the agreements
2 between PTS and its two subcontractor builders, Martinac for the tug boats and Metal
3 Shark for the dive boats, yet sought to induce these subcontractors to either not honor
4 their commitments to PTS or issue a high bid to PTS for the purpose of causing PTS to
5 lose the award. In particular, in February and March 2010 Ms. Foster repeatedly
6 directed and pressured PTS's boat building subcontractor Metal Shark to not honor its
7 bid to PTS to perform the dive boat contract, and to boycott PTS on future Navy
8 opportunities. Metal Shark is a boat builder that is also a client of Foster and naturally
9 is under great economic pressure to comply. Nevertheless PTS has attempted to
10 persuade Metal Shark to honor its commitments at least on the current project out for
11 bid, and it may be that Metal Shark will do so. But Ms. Foster wields enormous
12 authority over her clients, via practical control over the Navy's contract award process,
13 and it remains doubtful whether any client company can withstand the powerful
14 economic pressure Ms. Foster can bring to bear upon those dependent on her. Foster
15 Group and its clients perform most or nearly all of certain categories of this small craft
16 work for the Navy.

17 112. Finally, if Metal Shark does not uphold its obligation to support PTS on its
18 bid then PTS will be deprived of the opportunity to win and perform those contracts for
19 the Navy. Foster controls a large portion of the other work performed by Metal Shark
20 and so has the power to cause a breach of contract upon threat of loss of future
21 business.

22 113. Defendants' conduct has harmed PTS by imposing additional expenses on it
23 and by causing an erosion of PTS's reputation and goodwill among the Navy managers
24 and end-users of its programs.

25 114. Defendants' conduct in this regard was and is intentional, wrongful, and
26 designed to disrupt PTS's business.

27 115. Defendants' conduct may have destroyed PTS's opportunity to derive any
28

1 future revenue from its two federal boat sales programs or to recoup the substantial
2 investment it made in those programs. PTS's \$1.5 million investment has been rendered
3 nugatory.

4 116. As a direct proximate cause of defendants' breaches, Plaintiff suffered
5 damages as follows: loss most of its investment in the marketing program, in an amount
6 exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future business; and
7 as otherwise to be proven at trial.

8 117. The aforementioned acts were oppressive, malicious and/or fraudulent,
9 thereby justifying an award of punitive damages.

10 **SEVENTH CLAIM FOR RELIEF: TRADE SECRET MISAPPROPRIATION AND UNFAIR**
11 **COMPETITION**

12 (As Against All Defendants)

13 118. PTS realleges and incorporates herein by reference the allegations of
14 Paragraphs 1 through 117, *supra*.

15 119. PTS possesses trades secrets in its federal boat sales programs as defined
16 by California's Uniform Trade Secrets Act, Civil Code Sections 3426-3426.11.

17 120. These trade secrets are set out hereinabove and include but are not limited
18 to: (i) key contacts and emerging boat buying needs within the Navy's PEO Ships
19 organization (including PMS325G and PMS325I), the Navy's NSWCCD organization, and
20 for the specific program managers and end-users of the dive boat and tug boat lines
21 which PTS provides; (ii) information about PTS operations, including business and
22 marketing for these programs; (iii) PTS's financial plan and resource allocation for these
23 programs; (iv) the nature and cost justification for PTS's GSA Price List schedule; (v)
24 PTS's internal costs and pricing for these programs; (vi) PTS's agreements with its key
25 subcontractors and their cost structure for these programs; and other matters.

26 121. The Trade Secrets derive independent economic value, actual or potential,
27
28

1 from not being generally known to the public or to other persons who can obtain
2 economic value from their disclosure or use.

3 122. PTS has taken reasonable measures to maintain the secrecy of the Trade
4 Secrets, including but not limited to maintaining the information in a secure manner in
5 PTS facilities expressly requiring the maintenance of confidentiality with respect to PTS's
6 Trade Secrets.

7 123. Defendants have misappropriated the Trade Secrets by: (1) acquiring the
8 Trade Secrets with knowledge or reason to know that they were acquired by improper
9 means; (2) disclosing, using and/or threatening to use the Trade Secrets, in breach of
10 their fiduciary duties and without the express or implied consent of PTS; and (3) use of
11 those Trade Secrets to seek to undermine PTS's relationships in its federal boat sales
12 program and compete directly against PTS.

13 124. Defendants, and each of them, have been using the Trade Secrets with
14 knowledge or reason to know that their knowledge of the Trade Secrets was (1) acquired
15 under circumstances giving rise to a duty to maintain their secrecy or limit their use, or
16 (2) derived from or through a person who owed a duty to PTS to maintain the
17 confidentiality of the information.

18 125. PTS has suffered damages, and Defendants have been unjustly enriched in
19 an amount to be proven at trial, as a direct result of Defendants' misappropriation of the
20 Trade Secrets.

21 126. As a direct proximate cause of defendants' breaches, Plaintiff suffered
22 damages as follows: loss most of its investment in the marketing program, in an amount
23 exceeding \$1,000,000; its lost opportunity costs; lost profit on likely future business; and
24 as otherwise to be proven at trial.

25 127. Foster has, by the actions described hereinabove in this complaint, engaged
26 in unfair and wrongful competition and, further, has violated California's Unfair
27
28

1 Competition Act. Foster engaged in a serious of deeply dishonest and unfair business
2 practices. These practices offend established public policy, they are immoral, unethical,
3 oppressive, and unscrupulous.

4 128. Defendants' misappropriation of PTS's Trade Secrets has been willful and
5 malicious and entitles PTS to exemplary damages pursuant to Civil Code Section
6 3426.3(c) and an award of its reasonable attorneys' fees and costs pursuant to Civil Code
7 Section 3426.4.

8 **EIGHTH CLAIM FOR RELIEF: RESCISSION**

9 (As Against All Defendants)

10 129. PTS realleges and incorporates herein by reference the allegations of
11 Paragraphs 1 through 128, *supra*.

12 130. PTS's performance of its obligation to pay compensation to Foster was
13 conditioned on Foster's faithful and good faith development of the federal boat sales
14 program for PTS's tug boat and dive boat ventures. This condition precedent failed when
15 Foster secretly and corruptly was undermining PTS's position in the Program and
16 destroying its good will, all the while still under contract and receiving \$15,000/month
17 fees. Foster continued to attempt to damage or destroy PTS's position by libeling it to the
18 Navy customer and others in the industry, and unfairly using PTS's trade secrets to
19 compete against it. This constituted a total failure of consideration and a material
20 breach of their contract. Further, Foster has repudiated the essential goal of their 5-
21 year relationship, the marketing of PTS exclusively for the two programs. This
22 repudiation took the form of denial of assistance to PTS, active sabotage of PTS's
23 position, and violation of its fiduciary duty to not interfere with PTS's market position
24 with the Navy.
25

26 131. Furthermore, Foster's fraud in 2009 and 2010, in promising to work for
27 PTS in order to induce the making of continued \$15,000/month payments to Foster,
28 while in fact corruptly working to destroy PTS's position, renders their agreement void.

1 132. The series of contracts in effect between PTS and Foster from 2004 to 2010
2 were essentially one and the same agreement with the same purpose and obligations,
3 except for Foster's monthly compensation which increased from \$2,000 to \$15,000 over
4 the years. The purpose was to carry out a multi-year marketing campaign to secure
5 federal boat sales for PTS to the Navy.

6 133. Despite PTS's demand it do so, Foster has failed and refused carry out its
7 essential obligations under their agreements causing a total failure of consideration, and
8 has expressly and by implication repudiated these essential obligations. At the time of
9 Foster's repudiation, PTS had performed all of the terms and conditions on its part to be
10 done and performed, and was ready, able, and willing to continue performance.

11 134. Foster has destroyed nearly all value from PTS's \$1.5 million investment in
12 their 5-year boat sales marketing program. These actions include negative marketing
13 against PTS to the government customers, spreading of libelous and damaging
14 information directly to the key Navy contacts, verbally and by e-mail. In light of Foster's
15 strong influence with key Navy contacts, the damage to PTS's position is complete.
16

17 135. Foster is not entitled to credit for the tug boat contracts awarded to date.
18 Foster's actions constitute thoroughly corrupt, unethical, oppressive, and unscrupulous
19 behavior toward PTS, toward whom it owed a fiduciary duty of honesty and care.
20 Accordingly, PTS seeks an order of this Court that Foster is barred from any equitable
21 relief or amelioration in fashioning a remedy or granting relief in this action. Specifically,
22 Foster's unconscionable conduct gives rise to the defense of unclean hands and bars
23 relief for it, whether in reformation, unjust enrichment, or any other form of equity.

24 136. Notice of rescission and offer to restore consideration: the service of this
25 complaint is to serve as PTS's notice and offer.

26 ///

27 ///

28 ///

**NINTH CLAIM FOR RELIEF: DECLARATION THAT NO FUTURE COMPENSATION
DUE TO DEFENDANTS**

(As Against All Defendants)

137. PTS realleges and incorporates herein by reference the allegations of Paragraphs 1 through 136, *supra*.

138. Due to Foster's actions set forth hereinabove, PTS is entitled to relief from payment to Foster of any past or future fees, commissions, or expenses in any way related to their contracts or the federal boat sales program.

139. Foster is entitled to no equitable amelioration of the relief sought herein. Foster's actions constitute thoroughly corrupt, unethical, oppressive, and unscrupulous behavior toward PTS, toward whom it owed a fiduciary duty of honesty and care. Accordingly, PTS seeks an order of this Court that Foster is barred from any equitable relief or amelioration in fashioning a remedy or granting relief in this action. Specifically, Foster's unconscionable conduct gives rise to the defense of unclean hands and bars relief for it, whether in reformation, unjust enrichment, or any other form of equity.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For an award of damages in an amount of at least \$1,000,000, and as otherwise proven at trial;

2. For other relief including but not limited to disgorgement of any amounts by which Defendants have been unjustly enriched as a result of their wrongful conduct, including commissions earned off phantom listings on PTS's GSA price list;

3. For an order that all agreements between PTS and Defendants are rescinded, and that Defendants return to PTS all sums paid to Defendants or to the lobbyists in Defendants' marketing program, without any equitable relief or off-set (as

1 Defendants are barred by the doctrine of unclean hands from any such equitable relief or
2 off-set);

3 4. For a declaration and order that nothing is owing or will become due by
4 PTS to Defendants under or related to their contracts herein (including future fees,
5 commission, or expenses), and that Defendants are barred by the doctrine of unclean
6 hands from any equitable relief or off-set;

7 5. For an order requiring that Defendants not use any of PTS's trade secrets
8 or information that is proprietary and confidential; that Defendants return to PTS all
9 such materials; and that in addition Defendants return all other materials of any nature
10 acquired from PTS or from the Government concerning PTS in the course of their
11 relationship;

12 6. For an order that Defendants identify for PTS all communications and
13 contacts between Defendants and the Government customer and related individuals
14 regarding PTS's projects for which Defendants were hired by PTS to handle, including
15 any post-termination contacts that referred to PTS sufficient for PTS to counteract
16 Defendant's negative statements;

17 7. For an order that Defendants not compete or team with others against PTS
18 on the tug boat program for tugs numbers 5 and 6; or for any contract within the dive
19 boat program for a period of 18 months;

20 8. For an order that Defendants not hire, retain, or contact PTS's ex-vice
21 president of accounting and government contracts for a period of 18 months;

22 9. For an order that Foster is barred from any equitable relief or consideration
23 in this matter because it comes before the Court with unclean hands;

24 10. For temporary and preliminary injunctions to effectuate the relief sought
25 herein;

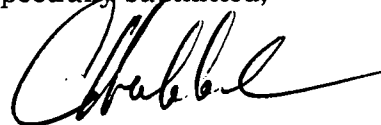
26 11. For punitive damages;

12. For attorneys' fees and costs; and

13. For all other relief the Court deems just and proper.

Dated: March 18, 2010

Respectfully submitted,



CLINTON D. HUBBARD
Attorney for Plaintiff Pacific Maritime Freight,
Inc.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PACIFIC MARITIME FREIGHT, INC.

(b) County of Residence of First Listed Plaintiff San Diego Co., CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Clinton D. Hubbard, Law Offices of Clinton D. Hubbard, 4445
Eastgate Mall, Ste. 200, San Diego CA 92121 tel: 858.663.5189

DEFENDANTS

SONIA L. FOSTER; THE FOSTER GROUP, INC., and DOES
1 through 10

County of Residence of First Listed Defendant Southern District of New York, MD
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED. BY BTM DEPUTY

Attorneys (If Known)

10 CV 0578

BTM BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC 1332, diversity

Brief description of cause:
Breach of contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 1,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/18/2010

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

11300

AMOUNT

\$350

APPLYING IFP

10/3/18/10

JUDGE

MAG. JUDGE

CP

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS011300
Cashier ID: kdelabar
Transaction Date: 03/18/2010
Payer Name: LAW OFC CLINTON HUBBARD

CIVIL FILING FEE
For: PFC MARITIME FREIGHT V. FOSTER
Case/Party: D-CAS-3-10-CV-000578-001
Amount: \$350.00

CHECK
Check/Money Order Num: 09882
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.